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FIRST GENERAL COUNSEL'S REPORT

CELA

RAD REFERRAL 12L-24
DATE RECEIVED: May 31, 2012
DATE ACTIVATED: August 16, 2012

SENSITIVE

EARLIEST SOL: January 30, 2015
LATEST SOL: January 26, 2016

SOURCE:

Internally Generated

RESPONDENT:

Committee to Re-Elect Trent Franks to Congress
and Lisa Teschler in her official capacity as
treasurer

RELEVANT STATUTES:

2 U.S.C. § 434(b)
11 C.F.R. § 104.3

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

I. INTRODUCTION

The Reports Analysis Division ("RAD") referred the Committee to Re-Elect Trent Franks to Congress and Lisa Teschler in her official capacity as treasurer (the "Committee") to the Office of the General Counsel ("OGC") for failing to disclose additional debt of \$305,807.34, and disbursements of \$11,923.28, an aggregate increase in activity of \$317,730.62. In total, the Committee filed nine incomplete disclosure reports with the Commission from 2010 to 2011. The Committee has asserted that the reporting discrepancies were a result of a former employee who "was not familiar with the process of reporting debts and did not know to use the Schedule D, as this was the first time we were required to report on this form." Letter from Committee to FEC, Miscellaneous Form 99 at 1 (June 20, 2011); *see also* Letter from Letter

1 from Lisa Teschler, Treasurer of Committee, to the FEC at 2 (July 13, 2012) (hereinafter
2 "Response").

3 Based on the available information, we recommend that the Commission open a matter
4 under review ("MUR") in connection with RR 12L-24, and find reason to believe that the
5 Committee violated 2 U.S.C. § 434(b) by failing to disclose receipts and disbursements
6 accurately in reports to the Commission. Additionally, we recommend that the Commission
7 enter into pre-probable cause conciliation with the Committee

8 9 **II. FACTUAL AND LEGAL ANALYSIS**

10 **A. Factual Background**

11 The Committee is the principal campaign committee of Trent Franks, U.S. Representative
12 for Arizona's 8th Congressional District. The Committee timely filed its 2009 Year End, 2010
13 April Quarterly, 2010 July Quarterly, 2010 12-Day Pre-Primary, 2010 October Quarterly, 2010
14 12-Day Pre-General, 2010 30-Day Post-General, 2010 Year End, and 2011 October Quarterly
15 Reports.

16 Between 2009 and 2011, the Committee incurred debt in connection with a contract it
17 entered into with Base Connect, a mail house provider, to provide mailing services. After being
18 hired by the Committee, Base Connect, in turn, hired subcontractors to assist in handling the
19 mailing services and managing a separate bank account in relation to these services. Base
20 Connect deposited the money from these mailing services to a separate bank account and
21 submitted a quarterly report to the Committee. The Committee used the data from the quarterly
22 report to generate the financial activity reports filed with the FEC. The first three Quarterly
23 Reports in 2009 reported the debt on a Schedule D. In contrast, beginning with the Year End

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Quarterly Report in 2009, Base Connect submitted reports to the Committee disclosing no Schedule D debt. In April 2011, a Base Connect Consultant found the omission of the Schedule D debt in the 2010 filings, which triggered an investigation and decision by the Committee to amend all the reports, starting with the original report in 2009, to reflect the Schedule D debt.

The Committee asserts that this self-disclosure was done in good faith upon learning the omission of the Schedule D debt. On August 2, 2011, Lisa Teschler contacted the Committee's RAD Analyst about submitting a Miscellaneous Form 99 with information about the undisclosed increased debts. At the RAD Analyst's direction, the Committee reconciled the Committee's financial activity and amended its reports. The Committee filed several amendments to each of these reports, which disclosed additional activity not included in the original reports, as reflected in the chart below.¹

Report	Date of Amendment	Increased Debt	Increased Disbursements	Total
2009 Year End	October 12, 2011	\$55,020.29	NA	\$55,020.29
2010 April Quarterly	November 1, 2011	\$70,658.75	NA	\$70,658.75
2010 July Quarterly	November 4, 2011	\$44,167.60	NA	\$44,167.60
2010 12-Day Pre-Primary*	November 7, 2011	\$18,488.95	NA	\$18,488.95
2010 October Quarterly*	November 8, 2011	\$78,938.26	NA	\$78,938.26
2010 12-Day Pre-General*	November 8, 2011	\$919.61	NA	\$919.61
2010 30-Day Post-General	November 11, 2011	\$32,526.86	NA	\$32,526.86
2010 Year End	November 11, 2011	\$5,087.02	NA	\$5,087.02
2011 October Quarterly	November 15, 2011	NA	\$11,923.28	\$11,923.28
	TOTAL	\$305,807.34	\$11,923.28	\$317,730.62

RAD referred the Committee to OGC for failing to disclose additional debt totaling \$305,807.34 and disbursements totaling \$11,923.28. See Memorandum from Patricia Carmona, Chief Compliance Officer, Federal Election Commission (FEC), to Anthony Herman, General

¹ Three of the reports, as indicated with an asterisk (*) were election sensitive. See, *infra*, n.3.

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Counsel, FEC (May 31, 2012) (hereinafter "Referral").

In response to the Referral, on July 13, 2012, the Committee acknowledged its errors but noted "this self-disclosure was done in good faith" and later noted that the committee "made every good faith effort to communicate, correct and comply with the FEC openly and honestly when errors were discovered." Response at 2-3. The Committee explained that the reporting discrepancies resulted from the failure of a former employee to accurately report its debt to Committee staff, as well as several underlying errors created by its vendor, Base Connect.

The Committee asserts that, upon this discovery, it immediately notified RAD that it had failed to report its debt. *See* July 13, 2012 Committee Response at 2-3. To remedy the discrepancies, the Committee states that it completed a comprehensive, voluntary internal investigation of all campaign disbursements from 2009 through 2011. *See* December 30, 2011 Committee Miscellaneous Form 99. The Committee hired a consultant to perform a full, unlimited audit of the Committee's books and FEC reports. *Id.* In accordance with the consultant's advice, the Committee filed amendments to FEC reports from 2009 through 2011.

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See July 13, 2012 Committee Response at 2-3; December 30, 2011 Committee Miscellaneous Form 99. The Committee asserts that it instituted new controls on its financial accounts and amended its accounting and reporting procedures to prevent such errors from recurring. *Id.* The Committee promised to report "any and all activities of the Committee in accordance with legal and ethical standards." July 13, 2012 Committee Response at 3.

B. Legal Analysis

The Federal Election Campaign Act of 1971, as amended (the "Act"), requires committee treasurers to file reports of receipts and disbursements in accordance with the provisions of 2 U.S.C. § 434. See 2 U.S.C. § 434(a)(1); 11 C.F.R. § 104.1(a). These reports must include, *inter alia*, the total amount of receipts and disbursements. See 2 U.S.C. § 434(b); 11 C.F.R. § 104.3. The Act also requires committees to disclose itemized breakdowns of receipts and disbursements and to disclose the name and address of each person who has made any contribution or received any disbursement in an aggregate amount or value in excess of \$200 within the calendar year, together with the date and amount of any such contribution or disbursement. See 2 U.S.C. § 434(b)(2)-(6); 11 C.F.R. § 104.3(b)(3)-(4). Similarly, committees are required to report the amount and nature of outstanding debts and obligations owed by or to the committee. 2 U.S.C. § 434(b)(8); 11 C.F.R. § 104.3(d).

Here, the Committee did not comply with the Act's reporting requirements when it failed to disclose \$305,807.34 in debt and \$11,923.28 in disbursements on its nine original reports listed above. We therefore recommend the Commission find reason to believe that the Committee violated 2 U.S.C. § 434(b).

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1 **IV. RECOMMENDATIONS**

- 2 1. Open a MUR in RR 12L-24.
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4 2. Find reason to believe that Trent Franks for Congress and Lisa Teschler in her
5 official capacity as treasurer violated 2 U.S.C. § 434(b).
6
7 3. Approve the attached Factual and Legal Analysis.
8
9 4. Enter into conciliation with Trent Franks for Congress and Lisa Teschler in her
10 official capacity as treasurer prior to a finding of probable cause to believe.
11
12 5.

³ Pursuant to 11 C.F.R. § 111.43(d)(1), election sensitive reports include October Quarterly Reports due on October 15 before the general election and Pre-General and Pre-Primary Reports. The Committee's 2010 October Quarterly Report, 2010 12-Day Pre-General Report, and 2010 12 Day Pre-Primary Report are election sensitive.

⁴ For the purpose of calculating Administrative Fines, election sensitive reports are considered "not filed" if they are not filed at least four days prior to the relevant election; non-election sensitive reports are considered "not filed" if they are not filed within 30 days of their due date. 11 C.F.R. § 111.43(e).

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6. Approve the appropriate letters.


Anthony Herman
General Counsel

Daniel A. Petalas
Associate General Counsel

10/15/12
Date

BY:


Kathleen M. Guith
Deputy Associate General Counsel
for Enforcement


Sada Manickam
Attorney

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